

## Environmental Protection Agency

## § 80.1450

### §§ 80.1444–80.1448 [Reserved]

#### § 80.1449 What are the Production Outlook Report requirements?

(a) By June 1 of each year (September 1 for the report due in 2010), a registered renewable fuel producer or importer must submit and an unregistered renewable fuel producer may submit all of the following information for each of its facilities, as applicable, to EPA:

(1) The type, or types, of renewable fuel expected to be produced or imported at each facility owned by the renewable fuel producer or importer.

(2) The volume of each type of renewable fuel expected to be produced or imported at each facility.

(3) The number of RINs expected to be generated by the renewable fuel producer or importer for each type of renewable fuel.

(4) Information about all the following:

(i) Existing and planned production capacity.

(ii) Long-range plans for expansion of production capacity at existing facilities or construction of new facilities.

(iii) Feedstocks and production processes to be used at each production facility.

(iv) Changes to the facility that would raise or lower emissions of any greenhouse gases from the facility.

(5) For expanded production capacity that is planned or underway at each existing facility, or new production facilities that are planned or underway, information on all the following, as available:

(i) Strategic planning.

(ii) Planning and front-end engineering.

(iii) Detailed engineering and permitting.

(iv) Procurement and construction.

(v) Commissioning and startup.

(6) Whether capital commitments have been made or are projected to be made.

(b) The information listed in paragraph (a) of this section shall include the reporting party's best estimates for the five following calendar years.

(c) Production outlook reports must provide an update of the progress in each of the areas listed in paragraph

(a) of this section in comparison to information provided in previous year production outlook reports.

(d) Production outlook reports shall be sent to one of the following addresses:

(1) *For U.S. Mail:* U.S. EPA, Attn: RFS Program—Production Outlook Reports, 6406J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(2) *For overnight or courier services:* U.S. EPA, Attn: RFS Program—Production Outlook Reports, 6406J, 1310 L Street, NW., 6th floor, Washington, DC 20005; (202) 343-9038.

(e) All production outlook reports required under this section shall be submitted on forms and following procedures prescribed by the Administrator.

[75 FR 14863, Mar. 26, 2010, as amended at 77 FR 1356, Jan. 9, 2012]

#### § 80.1450 What are the registration requirements under the RFS program?

(a) *Obligated parties and exporters.* Any obligated party described in § 80.1406, and any exporter of renewable fuel described in § 80.1430, must provide EPA with the information specified for registration under § 80.76, if such information has not already been provided under the provisions of this part. An obligated party or an exporter of renewable fuel must receive EPA-issued identification numbers prior to engaging in any transaction involving RINs. Registration information may be submitted to EPA at any time after publication of this rule in the FEDERAL REGISTER, but must be submitted and accepted by EPA by July 1, 2010, or 60 days prior to RIN ownership, whichever date comes later.

(b) *Producers.* Any RIN-generating foreign or domestic producer of renewable fuel, any foreign renewable fuel producer that sells renewable fuel for RIN generation by a United States importer, or any foreign ethanol producer that produces ethanol used in renewable fuel for which RINs are generated by a United States importer, must provide EPA the information specified under § 80.76 if such information has not already been provided under the provisions of this part, and must receive EPA-issued company and facility identification numbers prior to the

generation of any RINs for their fuel or for fuel made with their ethanol. Unless otherwise specifically indicated, all the following registration information must be submitted and accepted by EPA by July 1, 2010, or 60 days prior to the generation of RINs, whichever date comes later, subject to this subpart:

(1) A description of the types of renewable fuels or ethanol that the producer intends to produce at the facility and that the facility is capable of producing without significant modifications to the existing facility. For each type of renewable fuel or ethanol, the renewable fuel producer or foreign ethanol producer shall also provide all the following:

(i) A list of all the feedstocks the facility is capable of utilizing without significant modification to the existing facility.

(ii) A description of the facility's renewable fuel or ethanol production processes.

(iii) The type of co-products produced with each type of renewable fuel or ethanol.

(iv) A process heat fuel supply plan that includes all of the following:

(A) For all process heat fuel, provide all the following information:

(1) Each type of process heat fuel used at the facility.

(2) Name and address of the company supplying each process heat fuel to the renewable fuel or foreign ethanol facility.

(B) For biogas used for process heat, provide all the following information:

(1) Locations from which the biogas was produced or extracted.

(2) Name of suppliers of all biogas the producer purchases for use for process heat in the facility.

(3) An affidavit from the biogas supplier stating its intent to supply biogas to the renewable fuel producer or foreign ethanol producer, and the quantity and energy content of the biogas that it intends to provide to the renewable fuel producer or foreign ethanol producer.

(v) The following records that support the facility's baseline volume as defined in § 80.1401 or, for foreign ethanol facilities, their production volume:

(A) For all facilities except those described in paragraph (b)(1)(v)(B) of this section, copies of the most recent applicable air permits issued by the U.S. Environmental Protection Agency, state, local air pollution control agencies, or foreign governmental agencies and that govern the construction and/or operation of the renewable fuel or foreign ethanol facility.

(B) For facilities claiming the exemption described in § 80.1403(c) or (d), applicable air permits issued by the U.S. Environmental Protection Agency, state, local air pollution control agencies, or foreign governmental agencies that govern the construction and/or operation of the renewable fuel facility that were:

(1) Issued or revised no later than December 19, 2007, for facilities described in § 80.1403(c); or

(2) Issued or revised no later than December 31, 2009, for facilities described in § 80.1403(d).

(C) For all facilities, copies of documents demonstrating each facility's actual peak capacity as defined in § 80.1401 if the maximum rated annual volume output of renewable fuel is not specified in the air permits specified in paragraphs (b)(1)(v)(A) and (b)(1)(v)(B) of this section, as appropriate.

(D) Such other records as may be requested by the Administrator.

(vi) For facilities claiming the exemption described in § 80.1403(c) or (d), evidence demonstrating the date that construction commenced (as defined in § 80.1403(a)(1)) including all of the following:

(A) Contracts with construction and other companies.

(B) Applicable air permits issued by the U.S. Environmental Protection Agency, state, local air pollution control agencies, or foreign governmental agencies that governed the construction and/or operation of the renewable fuel facility during construction and when first operated.

(vii)(A) For a producer of renewable fuel or a foreign producer of ethanol made from separated yard waste per § 80.1426(f)(5)(i)(A):

(1) The location of any municipal waste facility or other facility from which the waste stream consisting

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solely of separated yard waste is collected; and

(2) A plan documenting how the waste will be collected and how the renewable fuel producer or foreign ethanol producer will conduct ongoing verification that such waste consists only of yard waste (and incidental other components such as paper and plastics) that is kept separate since generation from other waste materials.

(B) For a producer of renewable fuel or a foreign producer of ethanol made from separated food waste per § 80.1426(f)(5)(i)(B):

(1) The location of any municipal waste facility or other facility from which the waste stream consisting solely of separated food waste is collected; and

(2) A plan documenting how the waste will be collected, how the cellulosic and non-cellulosic portions of the waste will be quantified, and for ongoing verification that such waste consists only of food waste (and incidental other components such as paper and plastics) that is kept separate since generation from other waste materials.

(viii) For a producer of renewable fuel, or a foreign producer of ethanol, made from separated municipal solid waste per § 80.1426(f)(5)(i)(C):

(A) The location of the municipal waste facility from which the separated municipal solid waste is collected or from which material is collected that will be processed to produce separated municipal solid waste.

(B) A plan providing ongoing verification that there is separation of recyclable paper, cardboard, plastics, rubber, textiles, metals, and glass wastes to the extent reasonably practicable and which documents the following:

(1) Extent and nature of recycling that occurred prior to receipt of the waste material by the renewable fuel producer or foreign ethanol producer;

(2) Identification of available recycling technology and practices that are appropriate for removing recycling materials from the waste stream by the fuel producer or foreign ethanol producer; and

(3) Identification of the technology or practices selected for implementation by the fuel producer or foreign ethanol

producer including an explanation for such selection, and reasons why other technologies or practices were not.

(C) Contracts relevant to materials recycled from municipal waste streams as described in § 80.1426(f)(5)(iii).

(D) Certification by the producer that recycling is conducted in a manner consistent with goals and requirements of applicable State and local laws relating to recycling and waste management.

(ix)(A) For a producer of ethanol from grain sorghum or a foreign ethanol producer making product from grain sorghum and seeking to have it sold as renewable fuel after addition of denaturant, provide a plan that has been submitted and accepted by U.S. EPA that includes the following information:

(1) Locations from which the biogas used at the facility was produced or extracted.

(2) Name of suppliers of all biogas used at the facility.

(3) An affidavit from each biogas supplier stating its intent to supply biogas to the renewable fuel producer or foreign ethanol producer, the quantity and energy content of the biogas that it intends to provide to the renewable fuel producer or foreign ethanol producer, and that the biogas will be derived solely from landfills, waste treatment plants, and/or waste digesters.

(4) If the producer intends to generate advanced biofuel RINs, estimates of the total amount of electricity used from the grid, the total amount of ethanol produced, and a calculation of the amount of electricity used from the grid per gallon of ethanol produced.

(5) If the producer intends to generate advanced biofuel RINs, a description of how the facility intends to demonstrate and document that not more than 0.15 kWh of grid electricity is used per gallon of ethanol produced, calculated on a per batch basis, at the time of RIN generation.

(B) [Reserved]

(x)(A) For a producer of renewable fuel made from *Arundo donax* or *Pennisetum purpureum* per § 80.1426(f)(14)(i):

(1) A Risk Mitigation Plan (Plan) that demonstrates the growth of *Arundo donax* or *Pennisetum purpureum*

will not pose a significant likelihood of spread beyond the planting area of the feedstock used for production of the renewable fuel. The Plan must identify and incorporate best management practices (BMPs) into the production, management, transport, collection, monitoring, and processing of the feedstock. To the extent practicable, the Risk Mitigation Plan should utilize a Hazard Analysis Critical Control Point (HACCP) approach to examine each phase of the pathway to identify spread reduction steps. BMPs should include the development of mitigation strategies and plans to minimize escape and other impacts (e.g., minimize soil disturbance), incorporate desirable traits (e.g., sterility or reduced seed production), develop and implement dispersal mitigation protocols prior to cultivation, develop multiple year eradication controls. Eradication controls should follow an approach of early detection and rapid response (EDRR) to unintended spread. EDRR efforts should demonstrate the likelihood that invasions will be halted while still localized and identify and employ cooperative networks, communication forums, and consultation processes with federal, state, and local agencies. The Risk Mitigation Plan must provide for the following:

(i) Monitoring and reporting data for a period prior to planting that is sufficient to establish a baseline, through crop production, and extending beyond crop production for a sufficient period after the field is no longer used for feedstock production to ensure no remnants of giant reed or napier grass survive or spread.

(ii) Monitoring must include the area encompassing the feedstock growing areas, the transportation corridor between the growing areas and the renewable fuel production facility, and the renewable fuel production facility, extending to the distance of potential propagation of the feedstock species, or further if necessary.

(iii) Monitoring must reflect the likelihood of spread specific to the feedstock.

(iv) A closure plan providing for the destruction and removal of feedstock from the growing area upon abandon-

ment by the feedstock grower or end of production.

(v) A plan providing for an independent third party who will audit the monitoring and reporting conducted in accordance with the Plan on an annual basis, subject to approval of a different frequency by EPA.

(2) A letter from the United States Department of Agriculture (“USDA”) to the renewable fuel producer stating USDA’s conclusions and the bases therefore regarding whether the *Arundo donax* or *Pennisetum purpureum* does or does not present a significant likelihood of spread beyond the planting area of the feedstock used for production of the renewable fuel as proposed by the producer. This letter shall also include USDA’s recommendation of whether it is appropriate to require the use of a financial mechanism to ensure the availability of financial resources sufficient to cover reasonable potential remediation costs associated with the invasive spread of giant reed or napier grass beyond the intended planting areas. In coordination with USDA, EPA shall identify for the producer the appropriate USDA office from which the letter should originate.

(3) Identification of all federal, state, regional, and local requirements related to invasive species that are applicable for the feedstock at the growing site and at all points between the growing site and the fuel production site.

(4) A copy of all state and local growing permits held by the feedstock grower.

(5) A communication plan for notifying EPA’s Office of Transportation and Air Quality, USDA, adjacent federal land management agencies, and any relevant state, tribal, regional, and local authorities as soon as possible after identification of the issue if the feedstock is detected outside planted area.

(6) A copy of the agreement between the feedstock grower and fuel producer establishing all rights and duties of the parties related to the Risk Mitigation Plan and any other activities and liability associated with the prevention of the spread of *Arundo donax* and/or *Pennisetum purpureum* outside of the intended planting area.

(7) A copy of the agreement between the fuel producer and an independent third party describing how the third party will audit the monitoring and reporting conducted in accordance with the Risk Mitigation Plan on an annual basis, subject to approval of a different timeframe by EPA.

(8) Information on the financial resources or other financial mechanism (such as a state-administered fund, bond, or certificate of deposit) that would be available to finance reasonable remediation activities associated with the potential spread of giant reed or napier grass beyond the intended planting areas, and information on whether it is necessary to have any further such resources or mechanism. EPA may require a demonstration that there is an adequate financial mechanism (such as a state-administered fund, bond, or certificate of deposit) to ensure the availability of financial resources sufficient to cover reasonable potential remediation costs associated with the spread of giant reed or napier grass beyond the intended planting areas.

(9) EPA may require additional information as appropriate.

(B) For a producer of renewable fuel made from *Arundo donax* or *Pennisetum purpureum* per § 80.1426(f)(14)(ii):

(1) Clear and compelling evidence, including information and supporting data, demonstrating that *Arundo donax* or *Pennisetum purpureum* does not present a significant likelihood of spread beyond the planting area of the feedstock used for production of the renewable fuel. Evidence must include data collected from similar environments (soils, temperatures, precipitation, USDA Hardiness Zones) as the proposed feedstock production project site and accepted by the scientific community. Such a demonstration should include consideration of the elements of a Risk Mitigation Plan set forth in paragraph (b)(1)(x)(A) of this section, fully disclose the potential invasiveness of the feedstock, provide a closure plan for the destruction and removal of feedstock from the growing area upon abandonment by the feedstock grower or end of production, and explain why a Risk Mitigation Plan is

not needed to make the required determination.

(2) A letter from the United States Department of Agriculture (“USDA”) to the renewable fuel producer stating USDA’s conclusions and the bases therefore regarding whether the *Arundo donax* or *Pennisetum purpureum* does or does not present a significant likelihood of spread beyond the planting area of the feedstock used for production of the renewable fuel as proposed by the producer or importer. In coordination with USDA, EPA shall identify for the producer the appropriate USDA office from which the letter should originate.

(C) EPA may suspend a producer’s registration for purposes of generating RINs for renewable fuel using *Arundo donax* or *Pennisetum purpureum* as a feedstock if such feedstock has spread beyond the intended planting area.

(xi) For a producer of fuel oil meeting paragraph (2) of the definition of heating oil in § 80.1401:

(A) An affidavit from the producer of the fuel oil stating that the fuel oil for which RINs have been generated will be sold for the purposes of heating interior spaces of homes or buildings to control ambient climate for human comfort, and no other purpose.

(B) Affidavits from the final end user or users of the fuel oil stating that the fuel oil is being used or will be used for purposes of heating interior spaces of homes or buildings to control ambient climate for human comfort, and no other purpose, and acknowledging that any other use of the fuel oil would violate EPA regulations and subject the user to civil penalties under the Clean Air Act.

(2) An independent third-party engineering review and written report and verification of the information provided pursuant to paragraph (b)(1) of this section. The report and verification shall be based upon a site visit and review of relevant documents and shall separately identify each item required by paragraph (b)(1) of this section, describe how the independent third-party evaluated the accuracy of the information provided, state whether the independent third-party agrees with the information provided, and identify any exceptions between the

independent third-party's findings and the information provided.

(i) The verifications required under this section must be conducted by a professional engineer, as specified in paragraphs (b)(2)(i)(A) and (b)(2)(i)(B) of this section, who is an independent third-party. The verifying engineer must be:

(A) For a domestic renewable fuel production facility or a foreign ethanol production facility, a professional engineer who is licensed by an appropriate state agency in the United States, with professional work experience in the chemical engineering field or related to renewable fuel production.

(B) For a foreign renewable fuel production facility, an engineer who is a foreign equivalent to a professional engineer licensed in the United States with professional work experience in the chemical engineering field or related to renewable fuel production.

(ii) To be considered an independent third-party under this paragraph (b)(2):

(A) The third-party shall not be operated by the renewable fuel producer or foreign ethanol producer, or any subsidiary or employee of the renewable fuel producer or foreign ethanol producer.

(B) The third-party shall be free from any interest in the renewable fuel producer or foreign ethanol producer's business.

(C) The renewable fuel producer or foreign ethanol producer shall be free from any interest in the third-party's business.

(D) Use of a third-party that is debarred, suspended, or proposed for debarment pursuant to the Government-wide Debarment and Suspension regulations, 40 CFR part 32, or the Debarment, Suspension and Ineligibility provisions of the Federal Acquisition Regulations, 48 CFR, part 9, subpart 9.4, shall be deemed noncompliance with the requirements of this section.

(iii) The independent third-party shall retain all records pertaining to the verification required under this section for a period of five years from the date of creation and shall deliver such records to the Administrator upon request.

(iv) The renewable fuel producer or foreign ethanol producer must retain

records of the review and verification, as required in § 80.1454(b)(6).

(v) The third-party must provide to EPA documentation of his or her qualifications as part of the engineering review, including proof of appropriate professional license or foreign equivalent.

(vi) Owners and operators of facilities described in § 80.1403(c) and (d) must submit the engineering review no later than December 31, 2010.

(c) *Importers.* Importers of renewable fuel must provide EPA the information specified under § 80.76, if such information has not already been provided under the provisions of this part and must receive an EPA-issued company identification number prior to generating or owning RINs. Registration information must be submitted and accepted by EPA by July 1, 2010, or 60 days prior to an importer importing any renewable fuel with assigned RINs or generating any RINs for renewable fuel, whichever dates comes later.

(d) *Registration updates.*—(1) Any producer of renewable fuel, and any foreign ethanol producer who makes changes to his facility that will allow him to produce renewable fuel, as defined in § 80.1401 that is not reflected in the producer's registration information on file with EPA must update his registration information and submit a copy of an updated independent third-party engineering review on file with EPA at least 60 days prior to producing the new type of renewable fuel. The producer may also submit an addendum to the independent third-party engineering review on file with EPA provided the addendum meets all the requirements in paragraph (b)(2) of this section and verifies for EPA the most up-to-date information at the producer's existing facility.

(2) Any producer of renewable fuel and any foreign ethanol producer who makes any other changes to a facility that will affect the producer's registration information but will not affect the renewable fuel category for which the producer is registered per paragraph (b) of this section must update his registration information 7 days prior to the change.

(3) All producers of renewable fuel and foreign ethanol producers must update registration information and submit an updated independent third-party engineering review according to the schedule in paragraph (d)(3)(i) or (d)(3)(ii) of this section, and including the information specified in paragraph (d)(3)(iii) of this section:

(i) For all producers of renewable fuel and foreign ethanol producers registered in calendar year 2010, the updated registration information and independent third-party engineering review shall be submitted to EPA by January 31, 2013, and by January 31 of every third calendar year thereafter; or

(ii) For all producers of renewable fuel and foreign ethanol producers registered in any calendar year after 2010, the updated registration information and independent third-party engineering review shall be submitted to EPA by January 31 of every third calendar year after the first year of registration.

(iii) In addition to conducting the engineering review and written report and verification required by paragraph (b)(2) of this section, the updated independent third-party engineering review shall include a detailed review of the renewable fuel producer's calculations used to determine  $V_{RIN}$  of a representative sample of batches of each type of renewable fuel produced since the last registration. The representative sample shall be selected in accordance with the sample size guidelines set forth at § 80.127.

(e) Any party who owns RINs, intends to own RINs, or intends to allow another party to separate RINs as per § 80.1440, but who is not covered by paragraph (a), (b), or (c) of this section, must provide EPA the information specified under § 80.76, if such information has not already been provided under the provisions of this part and must receive an EPA-issued company identification number prior to owning any RINs. Registration information must be submitted at least 30 days prior to RIN ownership.

(f) Registration for any facility claiming an exemption under § 80.1403(c) or (d), must be submitted by July 1, 2013. EPA may in its sole discretion waive this requirement if it determines that the information submitted

in any later registration can be verified by EPA in the same manner as would have been possible with a timely submission.

(g) Registration shall be on forms, and following policies, established by the Administrator.

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26043, May 10, 2010; 77 FR 1356, Jan. 9, 2012; 77 FR 74606, Dec. 17, 2012; 78 FR 41714, July 11, 2013; 78 FR 62471, Oct. 22, 2013]

**§ 80.1451 What are the reporting requirements under the RFS program?**

(a) *Obligated parties and exporters.* Any obligated party described in § 80.1406 or exporter of renewable fuel described in § 80.1430 must submit to EPA reports according to the schedule, and containing all the information, that is set forth in this paragraph (a).

(1) Annual compliance reports for the previous compliance period shall be submitted by March 31 of each year, except as provided in paragraph (a)(1)(xiv) of this section, and shall include all the following information:

(i) The obligated party's or exporter's name.

(ii) The EPA company registration number.

(iii) Whether the domestic refiner, as defined in § 80.1406, is complying on a corporate (aggregate) or facility-by-facility basis.

(iv) The EPA facility registration number, if complying on a facility-by-facility basis.

(v) The production volume and import volume of all of the products listed in § 80.1407(c) and (e) for the reporting year.

(vi) The RVOs, as defined in § 80.1427(a) for obligated parties and § 80.1430(b) for exporters of renewable fuel, for the reporting year.

(vii) Any deficit RVOs carried over from the previous year.

(viii) The total current-year RINs by category of renewable fuel, as those fuels are defined in § 80.1401 (i.e., cellulosic biofuel, biomass-based diesel, advanced biofuel, renewable fuel, and cellulosic diesel), retired for compliance.

(ix) The total prior-year RINs by renewable fuel category, as those fuels are defined in § 80.1401, retired for compliance.